

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

FILED
ASHEVILLE, N.C.
MAY 21 2009
U.S. DISTRICT COURT
W. DIST. OF N.C.

1:09cv196

In re:

LR BUFFALO CREEK, LLC, a Georgia limited
liability Company,¹

Debtor.

Case No. 6:08-bk-10162-ABB
CHAPTER 7

(Pending in the United States
Bankruptcy Court for the Middle
District of Florida, Orlando Division)

HERSCHEL ALLEN and wife, ELIZABETH P.
ALLEN; SVEN RONNY CARLSON and wife,
SUSAN P. CARLSSON a/k/a CARLSSON
INVESTMENTS, LLC, WAYNE COX and wife,
JOSEPHINE COX; GLENN A. DAY and wife,
KATHERINE KOSTOFF-DAY; CALVIN C.

Adversary No. _____

¹ The Defendant / Debtors are parties to a series of Chapter 11 bankruptcy filings jointly administered by Order of the Bankruptcy Court. Post filing, all of the cases have been converted to Chapter 7 of Title 11 and assigned to Leigh Meininger, as Chapter 7 Trustee, except Land Resource, LLC and Point Peter, LLLP which remain in Chapter 11 under Title 11.

LAND RESOURCE, LLC,
LAND RESOURCE GROUP, INC.,
LAIRD POINT BROKERAGE, LLC
LR BUFFALO CREEK, LLC,
LR RIVERSEA, LLC,
BLUE MIST FARMS, LLC,
LAIRD POINT, LLC,
LRC HOLDINGS, LLC,
BRIDGE POINTE AT JEKYLL SOUND, LLC,
LAKEMONT ADVERTISING, LLC,
LRC REALTY, LLC,
CLARKS HILL LAKE, LLC,
LAND RESOURCE GROUP OF NORTH
CAROLINA, LLC,
COASTLINE PROPERTIES, LLC,
POINT PETER, LLLP,
LAND RESOURCE MEIGS COUNTY, LLC,
ROARING RIVER HOLDING COMPANY, INC.,
CUMBERLAND HARBOUR REALTY, LLC,
LAND RESOURCE ORCHARDS, LLC
HICKORY BLUFF MARINA CLUB, INC.,
ROARING RIVER, LLC,
LAND RESOURCE SATILLA RIVER, LLC,
HICKORY BLUFF MARINA, LLC,
RUSH CREEK LAND COMPANY, INC.,
LAIRD BAYOU BROKERAGE, LLC,
LAND RESOURCE WATTS BAR, LLC,
SOUTHERN HOA MANAGEMENT, LLC,
LAIRD BAYOU, LLC
STILLWATER COVES, LLC,
LANDFIRST MORTGAGE, LLC,
LR BAYTREE LANDING, LLC,
THE RIDGES AT MORGAN CREEK, LLC,
LANDFIRST TITLE, LLC,
VILLAGES AT NORRIS LAKE, LLC,
LRC AVIATION COMPANY, LLC

Case No. 6:08-bk-10159-ABB
Case No. 6:08-bk-10160-ABB
Case No. 6:08-bk-10161-ABB
Case No. 6:08-bk-10162-ABB
Case No. 6:08-bk-10163-ABB
Case No. 6:08-bk-10164-ABB
Case No. 6:08-bk-10165-ABB
Case No. 6:08-bk-10166-ABB
Case No. 6:08-bk-10167-ABB
Case No. 6:08-bk-10168-ABB
Case No. 6:08-bk-10169-ABB
Case No. 6:08-bk-10170-ABB

Case No. 6:08-bk-10171-ABB
Case No. 6:08-bk-10172-ABB
Case No. 6:08-bk-10173-ABB
Case No. 6:08-bk-10174-ABB
Case No. 6:08-bk-10175-ABB
Case No. 6:08-bk-10176-ABB
Case No. 6:08-bk-10177-ABB
Case No. 6:08-bk-10178-ABB
Case No. 6:08-bk-10179-ABB
Case No. 6:08-bk-10180-ABB
Case No. 6:08-bk-10181-ABB
Case No. 6:08-bk-10182-ABB
Case No. 6:08-bk-10183-ABB
Case No. 6:08-bk-10184-ABB
Case No. 6:08-bk-10185-ABB
Case No. 6:08-bk-10186-ABB
Case No. 6:08-bk-10187-ABB
Case No. 6:08-bk-10188-ABB
Case No. 6:08-bk-10189-ABB
Case No. 6:08-bk-10190-ABB
Case No. 6:08-bk-10191-ABB
Case No. 6:08-bk-10192-ABB
Case No. 6:08-bk-11675-ABB

HENDERSON and wife, ELAINE W.
HENDERSON; REUBEN T. JOY and wife,
KRYSTAL K. JOY; JOHN J. KASIANOWICZ
and wife, RACHEL H. KASIANOWICZ; JILL
ANNE LYCAN; GLENN M. SWARTZ, JR.,
and wife, DAWNA L. SWARTZ; DAVID LEE
WOOD; STEPHEN PETER BLOOM; MARCOS
I. RUBERT and wife, KATHRYN M. RUBERT
and BRIAN J. KREBS,

Plaintiffs,

vs.

LAND RESOURCE GROUP OF NORTH
CAROLINA, LLC, a North Carolina limited
liability company, LAND RESOURCE
DEVELOPMENT GROUP, INC., a Georgia
corporation, LAND RESOURCE GROUP,
INC., a Georgia corporation, LR BUFFALO
CREEK, LLC, a Georgia limited liability
Company; LAND RESOURCE, LLC a/k/a
LAND RESOURCE COMPANIES, LLC, a
Georgia limited liability company; MIKE
FLASKEY; J. ROBERT WARD; PAUL
BEIDEL; ROB VACKO; SCRIPPS
NETWORK INTERACTIVE d/b/a HGTV;
WACHOVIA BANK, N.A.; MITCH BEN
MILLER; SOUTHERN H.O.A.
MANAGEMENT, LLC; CLARK
CHAMPION; TAMMY MIKESELL;
ROBERT L. HULLETT; HOWARD
HULLETT APPRAISALS AND REALTY,
INC.; SHANNON GLOVER; EDDIE H.
GILBERT; LYNN SESSONS; EHG
APPRAISAL SERVICES; SUSAN GARREN;
MARIE A. FOX; HOMEFOCUS VALUATION
SERVICES, LLC; TWO DAY APPRAISAL;
RANDALL CONCHRAN; JEANETTE
MANNER- JONES; BRANCH BANKING &
TRUST COMPANY; BANK OF AMERICA
CORPORATION; JOHN DOE OFFICERS OF
LAND RESOURCE GROUP OF NORTH
CAROLINA, LLC; JOHN DOE OFFICERS
OF LAND RESOURCE DEVELOPMENT
GROUP, INC.; JOHN DOE OFFICERS OF

LAND RESOURCE GROUP, INC; JOHN
DOE OFFICERS OF LR BUFFALO
CREEK, LLC; JOHN DOE OFFICERS OF
LAND RESOURCE LLC a/k/a LAND
RESOURCE COMPANIES, LLC; JOHN
DOE DIRECTORS OF LAND RESOURCE
GROUP OF NORTH CAROLINA, LLC;
JOHN DOE DIRECTORS OF LAND
RESOURCE DEVELOPMENT GROUP,
INC.; JOHN DOE DIRECTORS OF
LAND RESOURCE GROUP, INC.; JOHN
DOE DIRECTORS OF LR BUFFALO
CREEK, LLC; JOHN DOE DIRECTORS
OF LAND RESOURCE, LLC a/k/a LAND
RESOURCE COMPANIES, LLC; JOHN
DOE APPRAISER; and JOHN DOE REAL
ESTATE AGENT,

Defendants.

NOTICE OF REMOVAL OF STATE COURT ACTION

Leigh R. Meininger, as Chapter 7 Trustee for the bankruptcy estate of LR Buffalo Creek, LLC and all the other named Chapter 7 Corporate entities identified in Footnote 1, pursuant to the provisions of 28 U.S.C. §§1452, Federal Rule of Bankruptcy Procedure 9027, hereby files this Notice of Removal of State Court Action Civil Case No: 08-CVS 1283 pending in the General Court of Justice Superior Court Division in and For the State of North Carolina, County Of Rutherford (the "Notice of Removal"), and, in support thereof, states as follows:

I. Jurisdiction and Diversity

1. This is a civil action over which the Court has original jurisdiction under the provisions of 28 U.S.C. §1332 and may be removed to this Court by the Trustee pursuant to the provisions of 28 U.S.C. 1441, because it is a civil action between citizens of different states, or citizens of a foreign State, and the matter in controversy exceeds \$75,000.00, exclusive of interest and costs.

2. According to the admissions of the Plaintiffs, the following Plaintiffs are residents of the following jurisdictions:

- A. Herschel Allen and wife, Elizabeth Allen (the "Allens") are citizens and residents of Dunwoody, Georgia.
- B. Sven Ronny Carlsson and wife, Susan P. Carlsson a/k/a Carlsson Investments, LLC, (the "Carlssons") are citizens and residents of Germantown, Tennessee.
- C. Wayne Cox and wife, Josephine Cox (the "Coxes") are citizens and residents of San Diego, California.
- D. Glenn A. Day and wife, Katherine Kostoff-Day (the "Days") are citizens and residents of San Diego, California.
- E. Calvin C. Henderson and wife, Elaine W. Henderson (the "Hendersons") are citizens and residents of Rockville, Maryland.
- F. Reuben T. Joy and wife, Krystal K. Joy (the "Joys") are citizens and residents of Simi Valley, California.
- G. John J. Kasianowicz and wife, Rachel H. Kasianowicz (the "Kasianowiczes") are citizens and residents of Darnestown, Maryland.
- H. Jill Anne Lycan ("Lycan") is a citizen and resident of Tomball, Texas.
- I. Glenn M. Swartz, Jr. and wife, Dawna L. Swartz (the "Swartzes") are citizens and residents of Mount Airy, Maryland.
- J. David Lee Wood ("Wood") is a citizen and resident of San Francisco, California.
- K. Stephen Peter Bloom ("Bloom") is a citizen and resident of San Francisco, California.
- L. Marcos I. Rubert and wife, Kathryn M. Rubert (the "Ruberts") are citizens and residents of Celebration, Florida.
- M. Brian J. Krebs ("Krebs") is a citizen and resident of Alpharetta, Georgia.

3. According to the allegations of the Plaintiffs, the Defendants are either incorporated or residents of the following jurisdictions:

- A. Defendant/Debtor Buffalo Creek is a Georgia limited liability company, whose registered agent for service of process is National Registered Agents Inc. with a registered mailing address of 120 Penmarc Drive, Suite 118, Raleigh, North Carolina 27603.
- B. Defendant/Debtor Land Resource is a Georgia limited liability company and is a Debtor in Bankruptcy see footnote 1.
- C. Upon information and belief, Defendant/Debtor LRC Realty is a subsidiary of LRC and a real estate brokerage firm that marketed and sold the lots in Grey Rock and collected real estate commissions therefrom.
- D. Upon information and belief, Defendant Flaskey was at all relevant times CEO of Defendant/Debtor Land Resource.
- E. Upon information and belief, Defendant Ward was at all relevant times Founder and Chairman of Defendant/Debtor Land Resource.

- F. Upon information and belief, Defendant Beidel was at all relevant times President and COO of Defendant/Debtor Land Resource.
- G. Upon information and belief, Defendant Vacko was at all relevant times CFO of Defendant/Debtor Land Resource.
- H. Defendant HGTV is a cable T.V. Network which upon information and belief is owned by Scripps Network Interactive, which is headquartered in Cincinnati, Ohio.
- I. Upon information and belief, Defendant Wachovia is a nationally chartered bank headquartered in Charlotte, North Carolina.
- J. Upon information and belief, Defendant Miller is a citizen and resident of the State of North Carolina, and is the attorney in fact and authorized agent of LR Buffalo Creek, LLC, with a registered mailing address of 120 Penmarc Drive, Suite 118, Raleigh, North Carolina 27603.
- K. Upon information and belief, Defendant SHOA is a Georgia limited liability company whose registered agent for service of process is National Registered Agents Inc. with a registered mailing address of 3761 Venture Drive, Duluth, Georgia 30096.
- L. Upon information and belief, Defendant Champion was at all relevant times Director of Community Operations for SHOA and has engaged in activities subjecting himself to the jurisdiction and venue of this court.
- M. Upon information and belief, Defendant Mikesell was at all relevant times Association Manager for SHOA and has engaged in activities subjecting herself to the jurisdiction and venue of this court.
- N. Upon information and belief, Defendant Manner-Jones was at all relevant times General Manager for SHOA and has engaged in activities subjecting herself to the jurisdiction and venue of this court.
- O. Upon information and belief, Defendant Howard Hullett Appraisals & Realty, Inc. is a North Carolina corporation whose registered agent for service is Howard Hullett, 2391 South Center Street, Hickory, North Carolina 28602.
- P. Upon information and belief, Defendant Robert L. Hullett is a licensed appraiser and a citizen and resident of the State of North Carolina.
- Q. Upon information and belief, Defendant Shannon Glover is a citizen and resident of Bluff City, Tennessee.
- R. Upon information and belief, Defendant EHG Appraisal Services, Inc., is a North Carolina corporation whose registered agent for service is Edwin H. Gilbert, One Tryon Place, Suite Tryon, North Carolina 28782.
- S. Upon information and belief, Defendant Gilbert is a licensed appraiser and a citizen and resident of Rutherford County, North Carolina.
- T. Upon information and belief, Defendant Sessoms is a licensed appraiser and a citizen and resident of the State of North Carolina.
- U. Upon information and belief, Defendant Garren is a licensed appraiser and a citizen and resident of the State of North Carolina.
- V. Upon information and belief, Defendant Cochran is a North Carolina licensed appraiser and a citizen and resident of the State of South Carolina.
- W. Upon information and belief, Defendant Fox is a citizen and resident of the State of North Carolina and is the attorney in fact and authorized agent of LR Buffalo

Creek, LLC, with a registered mailing address of 120 Penmarc Drive, Suite 118, Raleigh, North Carolina 27603.

- X. Upon information and belief, Defendant BB&T is a national commercial bank headquartered in Winston Salem, North Carolina.
- Y. Upon information and belief, Defendant BOA is a national commercial bank headquartered in Charlotte, North Carolina.

II. Grounds For Removal

4. This case may also be removed pursuant to the provisions of 11 U.S.C. 1334(b) and 1452, as well as Federal Bankruptcy Procedure, as this case arises under Title 11 of the United States Code, arises in a case under Title 11 of the United States Code, or is related to a case under Title 11 of the United States Code.

5. All of the named Debtor/Defendants are subject to voluntary petitions for relief originally under Chapter 11 of the United States Bankruptcy Code filed on October 30, 2008 in the Middle District of Florida, Orlando Division by the Bankruptcy Court as more fully set forth in Footnote 1.

6. On March 20, 2009, the Orlando Bankruptcy Court entered its *Order Converting Cases to Proceedings Under Chapter 7 of the Bankruptcy Code* (DE# 441; Jointly Administered Case No. 6:08-bk-10159-ABB). Leigh R. Meininger was appointed as the Chapter 7 Trustee (the "Trustee").

7. Previously, on September 11, 2008, this action was commenced in the General Court of Justice, Superior Court Division for Rutherford County, North Carolina, styled *Hershel Allen, etc., et al. v. Land Resource Group of North Carolina, LLC, etc., et al.*, Case No. 08 CVS 1283 (the "State Court Litigation").

8. The State Court Litigation is a civil proceeding which both arises and is related to the Chapter 7 bankruptcy case. Damages are claimed in the State Court Litigation as a result of alleged 1) violations of interstate land sales act full disclosure act failure to provide property

report; 2) violations of interstate land sales act fraud and deceit upon purchasers; 3) Rescission of contracts; 4) Breach of Contract; 5) Breach of Covenant of Good Faith and Fair Dealing; 6) Negligence; 7) Negligent Misrepresentation; 8) Fraud in the Inducement; 9) Fraud; 10) Constructive Fraud; 11) Breach of Fiduciary Duty; 12) Breach of Fiduciary Duty as to Individuals; 13) Unfair and Deceptive Trade Practices; 14) Injunctive Relief; 15) Punitive Damages relating to the acts or conduct or those acting on behalf of the Orlando Debtors in certain of the Orlando Debtor's capacity as developers and operations of a residential real estate development in Rutherford County, North Carolina known as "Grey Rock" or "Gray Rock at Lake Lure" including parties who acted on behalf of or at the direction of the Orlando Debtors.

9. The adjudication of the State Court Litigation directly effects the administration of the case to which the jurisdiction of the Bankruptcy Court is clearly involved. The Plaintiffs are scheduled creditors of the Orlando Debtors. All such claims and causes of action have a clear and direct impact on property of the estate under 11 U.S.C. §541. Resolution of the claims asserted in the State Court Litigation will significantly affect the administration of the estate and would involve the allowance or disallowance of claims against the estate pursuant to 11 U.S.C. §502, attempts to obtain property of the estate, allege fraudulent transfer of assets of the bankruptcy estate and proceedings affecting the liquidation of the assets of the estate and the adjustment of the debtor-creditor relationship.

III. Removal Procedures and Conditions Procedures

10. This Court has jurisdiction over the State Court Litigation pursuant to 28 U.S.C. §1334, and the action in its entirety and/or such claims or causes of action Plaintiffs assert against the Debtors and the co-Defendants may therefore be removed to this Court pursuant to 28 U.S.C. §1452 and Rule 9027, Federal Rules of Bankruptcy Procedure.

11. Upon removal, the State Court Litigation and the determination of all matters pertaining to the Plaintiffs' claims will be a core proceeding under 28 U.S.C. §157(b)(2)(A), (B), (C), (E), (H) and (O). To the extent any such removed claims or causes of action are non core proceedings, the Trustee consents to final orders being entered by the United States Bankruptcy Court in Orlando, Florida.

12. This notice of removal has been filed by May 20, 2009 pursuant to the Middle District of Florida Bankruptcy Court's Order. A copy of which is attached hereto as Exhibit "1."

13. No previous notice of removal for the relief sought herein has been made to this or any other court.

14. This Notice of Removal is accompanied by a copy of all process and pleadings filed in the State Court Litigation, with the exception of any discovery material, in accordance with Federal Bankruptcy Rule 9027. Copies of the above-mentioned process and pleadings in the State Court Litigation are to be filed contemporaneously with the filing of this Notice of Removal as Composite Exhibit "2." If additional documents relating to the State Court Litigation are required, the Trustee will submit such documents.

15. The Trustee has notified the Clerk for the General Court of Justice Superior Court Division in and For the State of North Carolina, County Of Rutherford. A copy of the Notice of Filing Notice of Removal is attached hereto as Exhibit "3"

16. If not transferred automatically by this Court, the Trustee will file a Motion to Transfer Venue of this case to the United States District Court for the Middle District of Florida for referral to the Bankruptcy Court.

WHEREFORE, the Trustee hereby removes the entire State Court Litigation in its entirety and/or such claims or causes of action Plaintiffs assert against the Defendants which are property of the estate, to this Court pursuant to Bankruptcy Rule 9027.

BROAD AND CASSEL

Proposed Attorneys for Leigh Meininger in
his capacity as Chapter 7 Trustee
Suite 1400
390 North Orange Avenue
Orlando, Florida 32801
PO Box 4961 (32802-4961)
Phone: (407) 839-4200
Fax: (407) 650-0927

By:


/s/ Roy S. Kobert

Roy S. Kobert, P.A.

Florida Bar #: 777153

rkobert@broadandcassel.com

Nicolette Corso Vilmos, Esq.

Florida Bar #: 634400

nvilmos@broadandcassel.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by either electronic noticing or U.S. Mail this 19 day of May, 2009 to: Debtor, Land Resource, LLC, 5337 Millenia Lakes Boulevard, Suite 121, Orlando, FL 32839; Debtor's Attorney: Jordi Guso, Esquire, Berger Singerman P.A., 200 S. Biscayne Blvd., Suite 1000, Miami, FL 33131-5308; John E. Menechino, Jr., Esquire, Smith, Currie & Hancock LLP, 2700 Marquis One Tower, 245 Peachtree Center Avenue, NE, Atlanta, GA 30303-1227; Matthew E. Cox, Esquire, Smith, Currie & Hancock, LLP, 1023 West Morehead Street, Charlotte, NC 28208; and the Office of the United States Trustee, 135 West Central Boulevard, Room 620, Orlando, Florida 32801 and via email and U.S. Mail to:

W. Perry Fisher III, Esq.
Perry Fisher, P.A.
1 N. Pack Square, Suite 402
Asheville, NC 28801

Attorneys for Plaintiffs

perry@perryfisherlaw.com; brad@perryfisherlaw.com

Jonathan E. Buchan, Esq.

McGuirewoods, LLP

100 N. Tryon Street, Suite 2900

Charlotte, NC 28202

Attorneys for Bank of America Corp.

JBuchan@mcguirewoods.com

Albert L. Sneed Jr., Esq.

W. Carleton Metcalf, Esq.

Van Winkle, Buck, Wall, Starnes & Davis, P.A.

P.O. Box 7376

Asheville, NC 28802-7376

Attorneys for Branch Bank and Trust Company

asneed@vwlawfirm.com; cmetcalf@vwlawfirm.com

Brian W. King, Esq.

King Law Offices, PLLC

215 North Main Street

Rutherfordton, NC 28139

Attorneys for Two Day Appraisal and Randall Cochran

bking@kinglawoffices.com

W.O. Brazil III, Esq.

Cogburn & Brazil, P.A.

P.O. Box 120

Asheville, NC 28802

Attorneys for Gilbert, Sessoms, E.H.G. Appraisal Service, Inc.

bbrazil@cobralawfirm.com

Anthony A. Fox, Esq.

Deborah L. Edney, Esq.

Benjamin R. Sullivan, Esq.

Parker Poe Adams & Bernstein, LLP

Three Wachovia Center, Suite 3000

401 South Tryon Street

Charlotte, NC 28202-1935

Attorneys for Defendant Scripps Interactive

Network d/b/a HGTV

anthonyfox@parkerpoe.com; debbieedney@parkerpoe.com; bobbysullivan@parkerpoe.com

Shannon Lovins, Esq.

The Lovins Law Firm, PA

120 College Street

Asheville, NC 28801
Attorneys for Susan Garren
shannon@lovinslawfirm.com

Todd King, Esq.
Cranfill, Sumner & Hartzog
2907 Providence Road, Suite 200
Charlotte, NC 28211
Attorneys for Robert Hullett, Howard Hullett Appraisals and Realty
tking@cshlaw.com; tak@cshlaw.com

Jon David Hensarling
Ragsdale Liggett PLLC
2840 Plaza Place, Suite 400
Raleigh, North Carolina 27612
jdhensarling@rl-law.com

J. Ellsworth Summers, Jr.
Rogers Towers, P.A.
1301 Riverplace Blvd., Suite 1500
Jacksonville, FL 32207
ESummers@rtlaw.com